

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )

Satellite Delivery of Network Signals to )  
Unserved Households for Purposes of )  
The Satellite Home Viewer Act )

Part 73 Definition and Measurement of )  
Signals of Grade B Intensity )

CS Docket No. 98-201  
RM No. 9335  
RM No. 9345

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS**

Media Venture Management, Inc. ("MVM"), licensee of WTXL-TV, Tallahassee, Florida, hereby submits Comments in response to the Notice of Proposed Rule Making ("NPRM") concerning the determination of when a household is "unserved" by local network affiliated stations for purposes of the Satellite Home Viewer Act of 1988 ("SHVA"), 17 USC § 119 (1998). MVM (1) generally endorses the comments submitted by the ABC Television Affiliates Association and (2) in particular opposes any redefinition of a television station's Grade B contour that would constrict the geographic area served by a local affiliate and thereby increase the number of households that would qualify as "unserved."

**WTXL-TV and its Expanded Service Area**

WTXL-TV is licensed to operate on Channel 27 in Tallahassee, Florida. WTXL-TV is the ABC affiliate in the Tallahassee, FL-Thomasville, GA television market, which is

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Nielsen's Designated Market Area Number 114. WTXL-TV broadcasts ABC network programming pursuant to a 10-year exclusive contract with the ABC network.

MVM holds a construction permit to build a new 518-meter tower at a new location northeast of the station's current transmitter site. File No. BPCT-960214KE. MVM estimates the total project cost at Three Million Dollars (\$3,000,000). MVM decided to incur that substantial expenditure because use of the new tower will enable WTXL-TV to expand its coverage area by 10,470 square kilometers – a 73% increase in coverage area.

The new WTXL-TV tower project thus represents MVM's financial commitment to improve and expand service to the entire Tallahassee-Thomasville television market. The investment is being made with the expectation that WTXL-TV's programming, including the ABC network programming carried on WTXL-TV, will be available to households throughout the entire market. Indeed, such availability is critical to WTXL-TV's ability to generate the advertising revenue to support the substantial financial investment in the tower.

MVM must have the knowledge and assurance that its investment will be recognized and supported by Commission actions to preserve the integrity of the local television market. Proposals to restrict the definition of a station's Grade B contour are inconsistent with that goal and would discourage investments in improved services by MVM and similarly situated local affiliates. In short, the Commission should not take any action which would make the standard for Grade B measurements more stringent and thereby increase the number of households who can obtain ABC (and other network)

programming directly from a satellite – especially when, as in the case of WTXL-TV, substantial measures are being taken (with Commission approval) to expand the public’s free, over-the-air access to network programming.

### **Congress Lacks Authority to Change Grade B Contour Definition**

The SHVA clearly defines an unserved household as a household that “cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network.” 17 USC § 119(d)(10)(A). When Congress adopted that provision in 1988, Congress no doubt relied on the definition of “grade B intensity” that was then incorporated in Commission rules.

Congress has not authorized the Commission to alter or waive the terms of the SHVA. Therefore, the Commission cannot change the definition of “grade B intensity,” unless and until Congress takes further action to amend the SHVA. *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 US 837 (1984). Any such change by the Commission would be particularly inappropriate since the Commission apparently intends to maintain a different definition of “grade B intensity” for other purposes.

### **Loser-Pays Mechanism for Dispute Resolution**

MVM supports the “loser pays” mechanism for challenges to illegal provision of satellite service. *NPRM* at Para. 42. If a broadcast station conducts a measurement that confirms that satellite service was provided illegally, then the broadcast station should be

reimbursed for its costs. Similarly, the reverse is true if a broadcaster wrongfully challenges the eligibility of a subscriber to receive network programming by satellite. The loser-pays mechanism would thus encourage parties to refrain from spurious litigation that might compromise a local affiliate's rights or, conversely, discourage satellite access by a household that truly does need satellite delivery.

### **Local-into-Local Satellite Signal Delivery Technology**

MVM supports "local-into-local" technology whereby satellite carriers would provide subscribers with the signals of their local broadcast network affiliates instead of signals from distant stations. *NPRM* at Para. 43. That approach reinforces the rights and expectations of local affiliates and would help preserve the Commission's support of "localism" in programming.

### **Conclusion**

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission (1) adopt the comments of the ABC Television Affiliates Association and (2) in particular retain the current definition of Grade B service for SHVA purposes.

Respectfully submitted,

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